

State of Maine
Tobacco Product Manufacturer's Initial Certification
Pursuant to 22 M.R.S.A. § 1580-L

GENERAL INFORMATION

Who is required to file this certification?

Any tobacco product manufacturer that intends to sell cigarettes within the State of Maine, whether directly or through any distributor, retailer, or similar intermediary.

This Certification is in addition to any Certificate of Compliance that may be required pursuant to 22 M.R.S.A. §§ 1580-G, *et seq.*

Definitions:

- (a) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes. 22 M.R.S.A. § 1580-L(1)(A).
- (b) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one (1) individual "cigarette." 22 M.R.S.A. § 1580-H(4).
- (c) "Directory" means the listing of all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of 22 M.R.S.A. § 1580-L and all brand families that are

listed in such certifications, except as provided by 22 M.R.S.A. § 1580-L.

- (d) "Master Settlement Agreement" has the same meaning as in 22 M.R.S.A. § 1580-H(5).
- (e) "Non-Participating Manufacturer" means any tobacco product manufacturer that is not a participating manufacturer. 22 M.R.S.A. § 1580-L(1)(D).
- (f) "Participating Manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto. 22 M.R.S.A. § 1580-L(1)(E).
- (g) "Qualified Escrow Fund" has the same meaning as that term is defined in 22 M.R.S.A. § 1580-H(6).
- (h) "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under 36 M.R.S.A. § 4366-A or any person that is required to pay the excise tax imposed on cigarettes, including roll-your-own tobacco, pursuant to 36 M.R.S.A. §§ 4361, *et seq.* or 36 M.R.S.A. §§ 4401, *et seq.*
- (i) "Tobacco Product Manufacturer" has the same meaning as that term is defined in 22 M.R.S.A. § 1580-H(9) and in 22 M.R.S.A. § 1580-L(1)(G).
- (j) "Units Sold" has the same meaning as that term is defined in 22 M.R.S.A. § 1580-H(10).

When is this certification due?

This certificate of compliance must be received on or before **October 28, 2003**, then on or before April 30th of each year following the sales year.

To whom must this certification be delivered?

The certification and any supplemental certification must be delivered to:

Marilynn Shorey
Research Assistant
Office of Attorney General
Six State House Station
Augusta, Maine 04333-0006

Records Retention Requirement

Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of **five years**, unless otherwise required by law to maintain them for a greater period of time.

SPECIFIC INSTRUCTIONS

Part 1: Manufacturer's Identification

Identify the tobacco product manufacturer's name, address, telephone, fax number and electronic mail address, and name/title of person completing the report.

Certify whether the tobacco product manufacturer, as of the date of the certification, (i) is a participating manufacturer or (ii) is a non-participating manufacturer in full compliance with 22 M.R.S.A. §§ 1580-G, *et seq.*

Part 2: Brand Family Identification

Only those brand families listed may be included in the Directory.

A. Participating Manufacturers

A participating manufacturer shall list its brand families. A participating manufacturer may not include a brand family in its certification unless it affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement.

The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

B. Non-Participating Manufacturers

A non-participating manufacturer shall include (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year; (iii) the name and address of any other manufacturer of such brand families in the preceding or current calendar year; and (iv) a list of any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification. A non-participating manufacturer may not include a brand family in its certification unless it affirms that the brand family is to be deemed to be its cigarettes for purposes of 22 M.R.S.A. §§ 1580-G, *et seq.*

The non-participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

Part 3: Non-Participating Manufacturer Certification

A. Agent for Service of Process

Certify whether the non-participating manufacturer is (i) domiciled in the State of Maine; (ii) a non-resident or foreign non-participating manufacturer that has registered to do business in Maine as a foreign corporation or business entity; or (iii) a non-participating manufacturer that has appointed an agent in the United States to act as agent for service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of 22 M.R.S.A. §§ 1580-G, *et seq.* and 22 M.R.S.A. § 1580-L, may be served in any manner authorized by law.

If the non-participating manufacturer has appointed an agent for service of process, please supply the information requested and attach proof of the appointment and availability of the agent.

Note: The non-participating manufacturer shall provide notice to the Attorney General thirty (30) days prior to the termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent not less than five (5) calendar days prior to the termination of an existing agency appointment. In the event an agent terminates an agency appointment, the non-participating manufacturer shall notify the Attorney General of the termination within five (5) calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of the new agent.

B. Qualified Escrow Fund – Financial Institution

Identify (i) the name, address, e-mail address, and telephone number of the financial institution where the non-participating manufacturer has established a qualified escrow fund pursuant to 22 M.R.S.A. §§ 1580-G, *et seq.* and (ii) the account number of such qualified escrow fund and any sub-account number for Maine. Also provide the name of a representative of the financial institution who is knowledgeable about the qualified escrow fund.

Please attach a copy of the non-participating manufacturer's escrow agreement. State whether the escrow agreement has been approved by the Attorney General's Office.

C. Escrow Deposit/Withdrawal History for Maine

Identify (i) the amount the non-participating manufacturer placed in the qualified escrow fund for cigarettes sold in the State during the preceding calendar year; (ii) the date and amount of each deposit; and (iii) the amount of and date of any withdrawal or transfer of funds the non-participating manufacturer made at any time from the fund or from any other qualified escrow fund into which the manufacturer ever made escrow payments pursuant to 22 M.R.S.A. §§ 1580-G, *et seq.* and all regulations promulgated pursuant thereto. **Please attach copies of records of the financial institution confirming the foregoing.** *Note:* All withdrawals must comply with 22 M.R.S.A. § 1580-I. Verification of compliance must be provided.

Part 4: Execution by Authorized Designees

The person executing the certification must be an officer, employee or other authorized representative of the tobacco product manufacturer identified in Part 1. Proof of such authorization may be required. The designee's name and title must be printed and the certification must be executed in the presence of an authorized notary.